

**Before The
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service Support Mechanism)	CC 02-6
)	
Further Notice of Proposed Rulemaking)	FCC 03-323
)	

**COMMENTS OF THE
Education and Libraries Networks Coalition**

INTRODUCTION

The Education and Libraries Networks Coalition (EdLiNC), a group comprised of the leading public and private education associations, was formed in 1995 to advocate for the interests of schools and libraries in the 1996 Telecommunications Act. Since the enactment of the E-Rate as part of that Act, EdLiNC has pursued a mission of preserving and protecting the E-Rate and has filed in every Commission rulemaking related to the program. As is reflected in our comments below, EdLiNC continues to focus on improving the program's administrative processes, ensuring that E-Rate discounts reach those most in need, and preserving the program's integrity.

In our initial comments on the Commission's most recent Further Notice of Proposed Rulemaking (FNPRM), we address a number of major issues raised in the FNPRM: 1) a proposed discount matrix adjustment; 2) the proposed establishment of a funding ceiling for each applicant; 3) proposed changes to the competitive bidding process; 4) a new definition for rural areas; 5) proposed changes to the current commitment adjustment process; 6) new requirements

regarding record retention; 7) new proposals relating to consultants and outside experts; 8) new proposals regarding the content of technology plans; and 9) a proposal to establish a superpriority for eligible applicants that have not yet connected all classrooms or library rooms to the Internet.

A. EdLiNC Opposes Changes to the Discount Matrix at this Time

In this FNPRM, the Commission seeks comment on whether it should amend the discount matrix to reduce discounts available in some or all of the discount bands in order to allow applicants in lower discount bands to receive internal connections funding and to deter waste, fraud and abuse in the program. Among other things, the Commission asks FNPRM commenters to address the relative merits of proposals advanced by various groups, including the State E-Rate Coordinators Association and the School and Library Division's (SLD) Waste, Fraud and Abuse Task Force, to lower the top tier discount for Priority II services to 70% or 80% and to establish pro rata funding distribution if insufficient funds exist to disburse 100% of discounts to applicants in the new combined tier. After carefully considering the proposals offered, EdLiNC is unable to support any change in the discount matrix at this time.

EdLiNC's inability to support discount matrix adjustments at this time flows from the Commission's recent adoption, in its *Third Report and Order*, of a rule limiting an eligible entity's receipt of discounts on internal connections to twice every five funding years. According to the Commission, this new rule, which takes effect in funding year 2005, yields two principal benefits:

1. The twice-every-five-years rule will make funds for discounts on internal connections available to a greater number of eligible schools.

2. Because the twice-every-five-years rule encourages applicants to scrutinize each application more closely and also to develop creative ways to fully use equipment purchased with Priority Two funds, the rule will help prevent instances of waste, fraud, and abuse in the program.

With the Commission already taking strong action in the Third Report and Order to combat waste, fraud and abuse and to catalyze wider disbursement of Priority II funds, EdLiNC does not see the reason for the Commission to take additional action. EdLiNC holds that the Commission should not contemplate any further steps to address these issues until the twice every five years rule has had sufficient time to work and it has proven unable to accomplish its stated goals.

Further, and perhaps most importantly from EdLiNC's perspective, EdLiNC remains committed to ensuring that the most disadvantaged applicants are adequately and equitably served by the program. We have strong reservations about any proposed reform that would undermine the program's commitment to connecting the poorest rural and urban schools and libraries in the country. Therefore, we are extremely concerned about the impact on such entities of a proposed discount matrix adjustment, where libraries and schools eligible for the highest program discount because of their economic need, would find themselves paying two or three times more for E-Rate eligible services. Such cost increases are potentially prohibitive for some schools and libraries, and therefore may reduce the number of economically disadvantaged schools that apply.

B. EdLiNC Opposes Creation of a Ceiling to Encourage Cost-Effective Funding Requests

In furtherance of its efforts to reduce waste, fraud, and abuse, the Commission also seeks comment on whether adopting a ceiling on funding requests would help effectuate this goal. The

proposal outlined in the FNPRM, and based on the SLD Waste, Fraud and Abuse Task Force's recommendations, does not include any formula that could be utilized to establish such a ceiling. EdLiNC has a number of objections to this proposal and is unable to support it.

First, EdLiNC believes that any formula to implement such a ceiling would need to be extremely complex, involving measurements that range from population or students served to relative costs of services to the economic wherewithal of individual applicants, in order to be fair. Moreover, SLD would be required to recalculate or at least review applicant recalculations on a yearly basis to keep up with the changing demographics of applying entities as well the changing marketplace. We submit that such a formula would be administratively burdensome for SLD and applicants. Most importantly, it would overturn the currently accepted and well-understood student free and reduced lunch count formula, which already takes into account most of these concerns.

Second, according to the Commission itself, the very activities that a funding ceiling would seek to curb have already been addressed by the new twice every five years rule. A funding ceiling that would further limit how much each applicant receives in addition to the new rule that limits how often it can receive internal connections funding strikes us as not only unnecessary at this time but very confusing for applicants and very burdensome administratively for SLD. In the end, EdLiNC believes that an additional funding ceiling restriction could chill the willingness of applicants to participate in the program. While EdLiNC fully supports measures aimed to protect the program's integrity, we believe that this proposal tilts the program too far towards over regulation at the expense of a relatively expeditious application process.

C. EdLiNC Supports Efforts to Make the Competitive Bidding Process More Efficient

The Commission asks for comment on whether simplifying the form 470 process, including eliminating the Form 470 posting process for some or all services, would benefit the program. Based on a careful review of comments filed with the Commission on this issue, EdLiNC concludes that eliminating the Form 470 posting process for recurring Priority I services, such as local and long distance telephone access, internet access, existing telecommunications services, and cell phone service, would be beneficial to the program.

While EdLiNC understands the laudable original intentions of the Form 470 posting process – establishing a national bidding network to drive down service costs for applicants – we have grown more aware in the past few years that there is little evidence that the current process is serving these functions. For too many applicants, the competitive bidding process has been the source of very few bids that they would not receive through ordinary local and state procurement processes. Moreover, it has become yet another hurdle in a program filled with many hurdles that the applicant must overcome in order to have SLD accept its application.

EdLiNC believes that applicants should not have to repeat a fruitless competitive bidding process year after year, particularly for month-to-month services that usually are not terribly costly. Therefore, we propose that the Commission allow eligible schools and libraries to continue recurring services with the same provider for a reasonable period of time, perhaps four to five years, without having to undertake a competitive bidding process each year. At that point, we believe it healthy for applicants, vendors and SLD for the Commission to require that applicants engage in a Form 470 posting process for recurring services in order to ensure that applicants are receiving the most cost effective recurring services and that new vendors in the market have an opportunity to bid to service applicants.

EdLiNC also supports efforts to deter collusion between vendors and to ensure reasonable prices in situations when only one provider exists that can provide a specific service. EdLiNC remains concerned, however, about “bright line” rules that would impose limits on the amount of discounts that could be available in such situations. “Bright line” rules could unfairly disadvantage schools and libraries in certain geographical areas where services are only available from one provider. EdLiNC does not recommend that the Commission adopt “bright line” rules in these situations and would prefer seeing other mechanisms that ensure reasonable prices for services.

D. EdLiNC Supports Proposals to Use the US Johnson Code System to Define Rural Applicants

The Commission also seeks input on the development of a new formula for determining whether an applicant is rural and thus eligible, in some cases, for deeper discounts. The formula previously used, the Goldsmith Modification, has been abandoned by the Office of Rural Health Care Policy. Based on a careful review by EdLiNC members including the American Association of School Administrators, the Association of Education Service Agencies, and the Rural School and Community Trust, EdLiNC supports the adoption of the US Johnson codes (also known as the Locale codes) as the most accurate, locally appropriate method of assessing rurality at the school building level. We urge the Commission to adopt this measure of rurality.

In use by the US Bureau of the Census since the early 1980s, the Johnson codes determine a particular building’s rurality based on the building’s proximity to metropolitan areas and on population size and density. From EdLiNC’s perspective, the unique ability of the Johnson codes to affix the relative rurality of a school or library building, and thus accurately reflect the rural character of an applicant itself, makes this measure extremely accurate.

Additionally, usage of the Johnson codes would allow the SLD to disaggregate applicants within large or county-wide discounts and affix a rural label to individual buildings that merit that designation and therefore deserve deeper discounts.

E. EdLiNC Objects to Some of the Proposals to Reform the Commitment Adjustment Process

The Commission proposes a number of major changes to the current commitment adjustment process, most particularly the establishment of a new rule that would bar applicants from receiving E-Rate discounts until all pending commitment adjustments have been satisfied. EdLiNC strongly disagrees with this proposal.

Over the past few years, EdLiNC has observed the progress of numerous Congressional, General Accounting Office, internal and external audits of the E-Rate program and has been concerned with the number of erroneous discount disbursements that such audits have uncovered. We agree that, within certain parameters discussed more fully below, applicants should repay erroneously disbursed funds and allow other eligible applicants to receive redistributions of those funds and to use them appropriately for eligible services. However, we have also observed that many alleged erroneous distributions uncovered through audits occurred many years previously and that some applicants wish to exercise their rights to contest audit findings. EdLiNC is concerned that any new rule that bars applicants from receiving current E-Rate discounts until all commitment adjustment issues are resolved unfairly pressures applicants to abandon their rights to contest inaccurate audit findings. Additionally, we find it fundamentally unjust to link action on previous applications with action on new applications that may involve wholly unrelated services and, in some cases, new application processing personnel. We cannot agree with this proposal.

This issue raises for us another concern: the seemingly limitless time period for SLD to investigate and seek commitment adjustments from applicants. We have heard anecdotally of SLD reaching back three or four years to attempt to reclaim funds that may have been erroneously disbursed but are most certainly long since spent. With so many public and private schools and libraries operating on limited budgets, these commitment adjustments threaten to wreak havoc on established technology programs, causing services to be cut off and other programs to be eliminated in order to repay commitment adjustments arising from actions that occurred years ago.

We do not think that unlimited time to recover erroneous disbursements, absent criminal violations, comports with fundamental notions of American justice. American jurisprudence long ago decided that most civil rights of action needed to be constrained by reasonable statutes of limitations in order to ensure due process and to allow witness memories remain fresh and evidence to be preserved. We think that the same should hold true here, especially since the program deals entirely with non-profit entities and entire communities will suffer from removal of previously paid funds. Therefore, we propose a two-year statute of limitations, which begins to run upon the issuance of a funding commitment decision letter, for the discovery and processing of a commitment adjustment. We hope the Commission will carefully consider this proposal.

F. EdLiNC Supports Reasonable New Recordkeeping Requirements

In the FNPRM, the Commission seeks public comment on codifying SLD's current recordkeeping retention policies that requires that applicants retain for five years all records related to the receipt of or delivery of discounted services. EdLiNC understands that a large,

complex program like E-rate demands accountability and careful recordkeeping. Archives help applicants justify their decisions and auditors retrace their steps if a question arises. We believe that it is clear that careful recordkeeping on the part of applicants can help the Commission meet its goal of spreading limited funds equitably, while reducing waste, fraud and abuse in the program.

However, EdLiNC also recognizes that requiring applicants to archive key documents will only work to the benefit of the program if applicants are aware of which documents specifically need to be retained and for how long. Therefore, while EdLiNC supports the Commission codifying the current record retention policy, we strongly encourage the FCC/SLD as part of that codification to prepare and disseminate to applicants an explicit and complete list of the documents included in the recordkeeping requirements. Furthermore, it is our belief that applicants should not be held accountable for documents not included on the list of required documents.

EdLiNC also supports the requirement that service providers retain records of rates charged to and discounts allowed for entities receiving supported services. For E-Rate to work, it must be a partnership between schools and/or libraries and service providers. Service providers must share in the accountability for decisions made and funds spent. However, just as in the case of applicants, we strongly encourage the Commission to detail which documents service providers are required to keep and for how long.

EdLiNC holds that creating detailed rules about recordkeeping will reduce applicant confusion, increase accountability, and minimize waste, fraud and abuse in the program.

G. EdLiNC Supports Disclosure of Conflicts By Consultants and Outside Experts But Objects to Requiring Registration of Unpaid Volunteers Without Conflicts

In a continuing effort to protect applicants from unscrupulous consultants and outside experts, the Commission proposes requiring that all consultants and outside experts disclose conflicts of interest and register with the Commission. EdLiNC supports these proposals in part and dissents from them in part.

Over the life of the program, E-Rate has become extremely complicated and difficult for most educators and librarians to navigate on their own. Complex and quickly changing rules, often-confusing messages, and multi-step application processes make applying for and participating in the program a significant administrative responsibility. For this reason, consultants have become the lifeblood of applicants, particularly those who cannot afford to devote significant staff time to program participation.

EdLiNC recognizes the vital role that consultants play in the E-Rate participation of schools and libraries. However, we also realize that there are legitimate conflict of interest concerns related to the role of some consultants in the technology planning and application processes. For this reason, EdLiNC supports the disclosure of conflicts by all consultants who participate in the preparation of E-Rate application materials. Additionally, we support barring from involvement in the application and technology planning processes those entities whose primary purpose is commercial profit and who are actively bidding to be providers.

However, EdLiNC cannot support the registration of unpaid consultants by the Commission. For many smaller, underserved schools and libraries, volunteers assist in the preparation and submission of application materials. We fear that forcing volunteers to register could have a chilling effect on this important function, and would unfairly penalize less-affluent schools and libraries that depend on volunteer support.

H. EdLiNC Opposes New Technology Plan Requirements

Another issue discussed in the Further Notice is whether an applicant must prove that it has considered and selected the most cost effective technology in its technology plan. Specifically, the Commission seeks comment on whether it should require applicants to incorporate into their technology plans evidence that they have considered the cost of leasing versus the cost of purchasing E-Rate eligible products and services. EdLiNC does not support these proposals.

EdLiNC does not believe that the technology planning process is the appropriate venue for determining the most cost-effective technology; this determination is more properly located in the competitive bidding process. We believe that the competitive bidding process, and the state and the local procurement processes, should continue to be the structures by which applicants determine the most appropriate technology to serve their needs and to uncover the lowest price for identified technology. Attempts to analyze the cost-effectiveness of technology within technology plans would be duplicative of that process and would form the basis of yet another new mandate on E-Rate applicants.

Rather than establish new regulations to govern technology plans, EdLiNC proposes that SLD develop training and technology plan models that instruct applicants how to develop thoughtful and comprehensive technology plans. Such action could only be beneficial to applicants and vendors and ensure that SLD is receiving technology plans that meet the requisite standards.

I. EdLiNC Supports Establishing Priority for Applicants that Have Not Achieved Connectivity

The Commission also seeks comment on whether applicants who have not achieved connectivity should be given priority status over those applicants who have already connected their schools and libraries. The goal of the E-Rate program is to achieve 100% connectivity and, according the National Center for Education Statistics, as of 2002, we are 92% of the way there in public school instructional classrooms and 95% for public libraries.

EdLiNC supports the E-Rate's goal of achieving 100% connectivity for schools and libraries as soon as possible. While we understand that the work of connecting schools and libraries is a task that will never be completed fully, particularly as systems must be upgraded and new buildings connected, we support the concept of establishing some type of Internet connectivity in all eligible applicant classrooms and libraries. Once this job is completed, we believe that the program can and should focus on the requisite level of connectivity to ensure that students and community members are able to access the best digital educational tools and resources available.

However, EdLiNC also recognizes that establishing a new priority for the unconnected may create new pressures on the program. Therefore, we feel that the Commission must immediately commission a study to determine who is unconnected, to determine the reasons for the lack of connectivity, and to assess how much it would cost to connect those who remain interested in participating in the program. If the cost of connecting all of the unconnected applicants is high, EdLiNC would support spreading out plans to fully connect all applicants over a period of years in order to avoid barring other applicants from making use of the program.

CONCLUSION

EdLiNC appreciates the opportunity to comment on the aforementioned issues related to the E-Rate program and looks forward to a continuing dialogue with the Commission and USAC on how to continue the E-Rate's successes while simultaneously ensuring its integrity and focus on equity.

The Members of EdLiNC Participating in this filing:

International Society for Technology in Education
National Education Association
National Education Knowledge Industry Association
Consortium for School Networking
United States Conference of Catholic Bishops
National Association of Independent Schools
National Rural Education Association
Association of Educational Service Agencies
American Association of School Administrators
National School Boards Association
American Federation of Teachers
National Association of Secondary School Principals
National Association of State Boards of Education
National Catholic Educational Association